

REMARKS

Claims 21 – 23, 25, 26, 32 – 41 are currently pending and Claims 1 – 20, and 24 and 27 – 31 are canceled. No new matter has been introduced into the claims by the amendment. Claim 21 has been amended to change the transitional phrase from “comprising” to “consisting of” and to add the step of heating the rice, noodles, or pasta in water. New Claims 32 – 41 contain the subject matter of Claims 21 – 23, 25, and 26 except in claims 32 and 37 the transitional phrase has been changed to “consisting essentially of” and in claim 37 a list of additives has been incorporated. Support for the list of additives is found on page 7, line 8 to page 8, line 19.

Applicants’ respectfully disagree with the Examiner and traverse the rejections with the following remarks.

Rejection under 35 U.S.C. § 112, first paragraph

Claims 27 – 31 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not supported by the specification; however, this rejection is now moot as the rejected claims are now canceled.

Rejection under 35 U.S.C. § 103

Applicants respectfully disagree with the Examiner’s rejection of Claims 21 – 23, 25, and 26 and the assertion that the claims are obvious in view of the combination of U.S. Patent 5,972,399 to Lapre, et al. (“Lapre”), Japanese Patent Application 11-249464 to Takahashi, et al. (“Takahashi”), and a non-patent publication, Jarvis, M.C., et al., “The polysaccharide structure of potato cell walls: Chemical fractionation,” Planta (1981) 152:93-100 (“Jarvis”). The Examiner admits on pages 3 and 4 of the Office Action dated October 27, 2010 that Lapre teaches cross-

linkable polysaccharides that are cross-linked during cooking that result in polysaccharides that are “at least essentially insoluble, or at least substantially insoluble, in boiling water.”

Independent Claims 21, 32, and 37 include either the transitional phrase “consisting of” or “consisting essentially of.” The transitional phrase “consisting of” excludes any element, step, or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948). The transitional phrase “consisting essentially of” limits the scope of a claim to the specified materials or steps “and those that do not materially affect the basic and novel characteristic(s)” of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976).

The claims as currently presented exclude water insoluble polysaccharides that are cross-linked. The white potato-derived polysaccharides of the present invention are water soluble and not cross-linked. Lapre requires the use of such polysaccharides to reduce the glycemic response upon ingesting food coated with the insoluble polysaccharides and relies on this aspect of the coated food to distinguish the prior art at Col. 5, ll. 36 – 40 and 60 – 64.

Claim 21 excludes the use of insoluble polysaccharides that are cross-linked as disclosed in Lapre because Claim 21 includes the transitional phrase “consisting of.” Only soluble polysaccharides are listed as an element of the invention. Claims 32 and 37 include the transitional phrase “consisting essentially of” and the inclusion of an insoluble polysaccharide would materially affect the basic and novel characteristics of the claimed invention. The enhanced properties of the cooked rice, pasta, or noodles, i.e. avoiding sticking, are achieved by the use of the soluble polysaccharides. An essentially insoluble or substantially insoluble polysaccharide does not provide the same results as Applicants’ invention. Therefore, Lapre cannot be used as prior art.

Appln. No. 10/532,699
Amdt. Dated: January 27, 2011
Reply to Official Action of October 27, 2010

Because all of the Examiner's rejections rely on a combination with Lapre, the claims as presented are not obvious in view of the combination of the cited references. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the claims presented herewith are patentable over the prior art of record and in condition for allowance. Applicants respectfully solicit prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.

Respectfully submitted,

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Order No.: 8719